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Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

ELF-MAN, LLC,
Plaintiff
v.

CHARLES BROWN, an Individual,
et al.
Defendants.

Case No. 13-cv-0115-TOR

DEFENDANT'S FIRST ANSWER TO
PLAINTIFF'S COMPLAINT

JURY TRIAL DEMANDED

Defendant C. G. Chinque Albright ("Defendant"), by and through undersigned counsel, hereby answers Plaintiff ELF-MAN, LLC, ("Elf-Man")'s complaint against Defendant as follows:

INTRODUCTION

1. Defendant denies the Plaintiff's allegations in Paragraph 1, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

2. Defendant denies the Plaintiff's allegations in Paragraph 2, because

the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

3. Defendant denies the Plaintiff's allegations in Paragraph 3, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

4. Defendant denies the Plaintiff's allegations in Paragraph 4, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

5. Defendant denies the Plaintiff's allegations in Paragraph 5, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

6 Defendant denies the Plaintiff's allegations in Paragraph 6, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

7. Defendant denies the Plaintiff's allegations in Paragraph 7, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

8. Defendant denies the Plaintiff's allegations in Paragraph 8, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

9. Defendant denies the Plaintiff's allegations in Paragraph 9, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

10. Defendant denies the Plaintiff's allegations in Paragraph 10.

JURISDICTION AND VENUE

11. Defendant avers that Paragraph 11 of the Complaint makes legal conclusions that do not require a response, except that Defendant agrees that Plaintiff is seeking relief under the Copyright Act (Title 17 U.S.C. § 101 et seq).

12. Admitted.

13. Admitted only as to the instant Defendant. Defendant is without sufficient knowledge to admit regarding any other defendant.

PARTIES

14. Defendant denies the Plaintiff's allegations in Paragraph 14, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

15. Defendant denies the Plaintiff's allegations in Paragraph 15, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

16. Defendant denies the Plaintiff's allegations in Paragraph 16, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

17. Defendant denies the Plaintiff's allegations in Paragraph 17, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

18. Defendant denies the Plaintiff's allegations in Paragraph 18, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

19. Defendant denies the Plaintiff's allegations in Paragraph 20, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

20. Defendant denies the Plaintiff's allegations in Paragraph 20, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

21. Denied as to the instant Defendant.

THE DEFENDANTS

In General

22. Defendant denies the Plaintiff's allegations in Paragraph 22.

23. Defendant denies the Plaintiff's allegations in Paragraph 23.

24. Denied as to the instant Defendant. Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations as to the remaining defendants.

25. Defendant denies the Plaintiff's allegations in Paragraph 25.

26. Defendant denies the Plaintiff's allegations in Paragraph 26, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Identification of Named Defendants

27. Defendant denies the Plaintiff's allegations in Paragraph 27, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

28. Defendant denies the Plaintiff's allegations in Paragraph 28, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

29. Defendant denies the Plaintiff's allegations in Paragraph 29, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

30. Defendant denies the Plaintiff's allegations in Paragraph 30, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

31. Admitted.

32. Defendant denies the Plaintiff's allegations in Paragraph 32, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

33. Defendant denies the Plaintiff's allegations in Paragraph 33, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

34. Defendant denies the Plaintiff's allegations in Paragraph 34, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

35. Defendant denies the Plaintiff's allegations in Paragraph 35, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

36. Defendant denies the Plaintiff's allegations in Paragraph 36, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

37. Defendant denies the Plaintiff's allegations in Paragraph 37, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

38. Defendant denies the Plaintiff's allegations in Paragraph 38, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

39. Defendant denies the Plaintiff's allegations in Paragraph 39, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

40. Defendant denies the Plaintiff's allegations in Paragraph 40, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

41. Defendant denies the Plaintiff's allegations in Paragraph 41, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

42. Defendant denies the Plaintiff's allegations in Paragraph 42, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

43. Defendant denies the Plaintiff's allegations in Paragraph 43, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

44. Defendant denies the Plaintiff's allegations in Paragraph 44, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

45. Defendant denies the Plaintiff's allegations in Paragraph 45, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

46. Defendant denies the Plaintiff's allegations in Paragraph 46, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

47. Defendant denies the Plaintiff's allegations in Paragraph 47, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

48. Defendant denies the Plaintiff's allegations in Paragraph 48, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

49. Defendant denies the Plaintiff's allegations in Paragraph 49, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

50. Defendant denies the Plaintiff's allegations in Paragraph 50, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

51. Defendant denies the Plaintiff's allegations in Paragraph 51, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

52. Defendant denies the Plaintiff's allegations in Paragraph 52, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

53. Defendant denies the Plaintiff's allegations in Paragraph 53, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

54. Defendant denies the Plaintiff's allegations in Paragraph 54, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

55. Defendant denies the Plaintiff's allegations in Paragraph 55, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

56. Defendant denies the Plaintiff's allegations in Paragraph 56, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

57. Defendant denies the Plaintiff's allegations in Paragraph 57, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

58. Defendant denies the Plaintiff's allegations in Paragraph 58, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

59. Defendant denies the Plaintiff's allegations in Paragraph 59, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

60. Defendant denies the Plaintiff's allegations in Paragraph 60, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

61. Defendant denies the Plaintiff's allegations in Paragraph 61, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

62. Defendant denies the Plaintiff's allegations in Paragraph 62, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

63. Defendant denies the Plaintiff's allegations in Paragraph 63, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

64. Defendant denies the Plaintiff's allegations in Paragraph 64, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

65. Defendant denies the Plaintiff's allegations in Paragraph 65, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

66. Defendant denies the Plaintiff's allegations in Paragraph 66, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

67. Defendant denies the Plaintiff's allegations in Paragraph 67, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

68. Defendant denies the Plaintiff's allegations in Paragraph 68, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

69. Defendant denies the Plaintiff's allegations in Paragraph 69, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

70. Defendant denies the Plaintiff's allegations in Paragraph 70, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

71. Defendant denies the Plaintiff's allegations in Paragraph 71, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

72. Defendant denies the Plaintiff's allegations in Paragraph 72, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

73. Defendant denies the Plaintiff's allegations in Paragraph 73, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

74. Defendant denies the Plaintiff's allegations in Paragraph 74, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

75. Defendant denies the Plaintiff's allegations in Paragraph 75, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

76. Defendant denies the Plaintiff's allegations in Paragraph 76, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

77. Defendant denies the Plaintiff's allegations in Paragraph 77, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

78. Defendant denies the Plaintiff's allegations in Paragraph 78, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

79. Defendant denies the Plaintiff's allegations in Paragraph 79, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

80. Defendant denies the Plaintiff's allegations in Paragraph 80, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

81. Defendant denies the Plaintiff's allegations in Paragraph 81, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

82. Defendant denies the Plaintiff's allegations in Paragraph 82, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

83. Defendant denies the Plaintiff's allegations in Paragraph 83, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

84. Defendant denies the Plaintiff's allegations in Paragraph 84, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

85. Defendant denies the Plaintiff's allegations in Paragraph 85, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

86. Defendant denies the Plaintiff's allegations in Paragraph 86, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

87. Defendant denies the Plaintiff's allegations in Paragraph 87, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

88. Defendant denies the Plaintiff's allegations in Paragraph 88, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

89. Defendant denies the Plaintiff's allegations in Paragraph 89, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

90. Defendant denies the Plaintiff's allegations in Paragraph 90, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

91. Defendant denies the Plaintiff's allegations in Paragraph 91, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

92. Defendant denies the Plaintiff's allegations in Paragraph 92, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

93. Defendant denies the Plaintiff's allegations in Paragraph 93, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

94. Defendant denies the Plaintiff's allegations in Paragraph 94, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

95. Defendant denies the Plaintiff's allegations in Paragraph 95, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

96. Defendant denies the Plaintiff's allegations in Paragraph 96, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

97. Defendant denies the Plaintiff's allegations in Paragraph 97, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

98. Defendant denies the Plaintiff's allegations in Paragraph 98, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

99. Defendant denies the Plaintiff's allegations in Paragraph 99, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

100. Defendant denies the Plaintiff's allegations in Paragraph 100, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

101. Defendant denies the Plaintiff's allegations in Paragraph 101, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Further Identification of the remaining Doe Defendants

102. Defendant denies the Plaintiff's allegations in Paragraph 102, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

JOINER

103. Defendant denies the Plaintiff's allegations in Paragraph 103.

104. Defendant denies the Plaintiff's allegations in Paragraph 104.

105. Defendant denies the Plaintiff's allegations in Paragraph 105, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

106. Defendant denies the Plaintiff's allegations in Paragraph 106, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

107. Defendant denies the Plaintiff's allegations in Paragraph 107, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

108. Defendant denies the Plaintiff's allegations in Paragraph 108, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

FACTS COMMON TO ALL CLAIMS

IP Addresses

109. Defendant denies the Plaintiff's allegations in Paragraph 109, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

110. Denied. An IP address identifies only a piece of hardware; it does not identify either an account holder or user.

111. Denied. An IP address identifies only a piece of hardware; it does not identify either an account holder or user.

112. Defendant denies the Plaintiff's allegations in Paragraph 112, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

113. Denied.

114. Defendant denies the Plaintiff's allegations in Paragraph 114, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

115. Denied as to the instant Defendant.

116. Defendant denies the Plaintiff's allegations in Paragraph 116, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

117. Defendant denies the Plaintiff's allegations in Paragraph 117, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

118. Denied as to the instant Defendant.

119. Defendant denies the Plaintiff's allegations in Paragraph 119, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

120. Defendant denies the Plaintiff's allegations in Paragraph 120, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

121. Defendant denies the Plaintiff's allegations in Paragraph 121, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

122. Defendant denies the Plaintiff's allegations in Paragraph 122, because the

Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

123. Defendant denies the Plaintiff's allegations in Paragraph 123, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

124. Defendant denies the Plaintiff's allegations in Paragraph 124, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

125. Defendant denies the Plaintiff's allegations in Paragraph 125, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

126. Defendant denies the Plaintiff's allegations in Paragraph 126, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

127. Defendant denies the Plaintiff's allegations in Paragraph 127, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

128. Defendant denies the Plaintiff's allegations in Paragraph 128, because the Defendant does not have sufficient knowledge or information to form a belief

about the truth of the allegations.

129. Defendant denies the Plaintiff's allegations in Paragraph 129, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

130. Defendant denies the Plaintiff's allegations in Paragraph 130, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

131. Defendant denies the Plaintiff's allegations in Paragraph 131, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

132. Defendant denies the Plaintiff's allegations in Paragraph 132, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

133. Defendant denies the Plaintiff's allegations in Paragraph 133, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

134. Defendant denies the Plaintiff's allegations in Paragraph 134, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

135. Defendant denies the Plaintiff's allegations in Paragraph 135, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

136. Defendant denies the Plaintiff's allegations in Paragraph 136, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

Conduct of Defendants

137. Defendant denies the Plaintiff's allegations in Paragraph 137, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

138. Denied as to the instant Defendant.

139. Denied as to the instant Defendant.

140. Denied as to the instant Defendant.

141. Defendant denies the Plaintiff's allegations in Paragraph 141, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

142. Denied as to the instant Defendant.

143. Denied as to the instant Defendant.

144. Denied as to the instant Defendant.

145. Denied as to the instant Defendant.

146. Denied as to the instant Defendant.

Exemplar Defendant

147. Denied.

148. Denied.

149. Defendant denies the Plaintiff's allegations in Paragraph 149, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

CLAIMS FOR RELIEF STATED IN THE ALTERNATIVE

FIRST CLAIM FOR RELIEF

Copyright infringement

150. Defendant re-affirms the answers provided in paragraphs 1 – 149.

151. Defendant denies the Plaintiff's allegations in Paragraph 151.

152. Defendant denies the Plaintiff's allegations in Paragraph 152.

153. Defendant denies the Plaintiff's allegations in Paragraph 153.

154. Defendant denies the Plaintiff's allegations in Paragraph 154.

155. Defendant denies the Plaintiff's allegations in Paragraph 155.

156. Defendant denies the Plaintiff's allegations in Paragraph 156.

157. Defendant denies the Plaintiff's allegations in Paragraph 157.

158. Denied as to the instant Defendant.

SECOND CLAIM FOR RELIEF

Contributory infringement

159. Defendant re-affirms the answers provided in paragraphs 1 – 149.

160. Defendant denies the Plaintiff's allegations in Paragraph 160.

161. Defendant denies the Plaintiff's allegations in Paragraph 161.

162. Defendant denies the Plaintiff's allegations in Paragraph 162.

163. Defendant denies the Plaintiff's allegations in Paragraph 163, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

164. Defendant denies the Plaintiff's allegations in Paragraph 164, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

165. Defendant denies the Plaintiff's allegations in Paragraph 165.

166. Denied as to the instant Defendant.

THIRD CLAIM FOR RELIEF

Indirect Infringement of Copyright

167. Defendant re-affirms the answers provided in paragraphs 1 – 149.

168. Defendant denies the Plaintiff's allegations in Paragraph 168.

169. Denied. The law does not recognize such “indirect” liability.

170. Defendant denies the Plaintiff's allegations in Paragraph 170, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

171. Denied.

172. Denied as to the instant Defendant.

173. Defendant denies the Plaintiff's allegations in Paragraph 173, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

174. Defendant denies the Plaintiff's allegations in Paragraph 174, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

175. Defendant denies the Plaintiff's allegations in Paragraph 175.

176. Defendant denies the Plaintiff's allegations in Paragraph 176, because the Defendant does not have sufficient knowledge or information to form a belief about the truth of the allegations.

DAMAGES

177. Defendant denies that Plaintiff is entitled to any damages award under any

theory alleged in the Complaint.

Notice of Further Claims

178. Plaintiff's "notice" does not appear to call for either an admission or denial.

To the extent this paragraph does state facts that should be denied, Defendant denies those allegations as being without sufficient knowledge.

179. Plaintiff's "notice" does not appear to call for either an admission or denial.

180. Plaintiff's "notice" does not appear to call for either an admission or denial.

DEFENSES

FIRST DEFENSE

Declaratory Judgment of Non-infringement

181. Plaintiff incorrectly alleges that Defendant willfully infringed their exclusive rights under United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the "Copyright Act").

182. Defendant has not infringed the copyrights of Plaintiff nor violated and exclusive rights held by Plaintiff under the aforementioned statutes. The defendant denies the allegations of copyright infringement raised by Plaintiff.

183. Defendant is entitled to a declaration as a matter of law that Defendant has not infringed any of the exclusive rights alleged to be held by Plaintiff.

SECOND DEFENSE

Rule 12(b)(6), Fed. R. Civ. P.

184. Defendant argues that Plaintiff has failed to state a sufficient factual basis to constitute a cause of action on any count, and therefore request a dismissal of Plaintiff's Complaint.

185. Because Plaintiff is unable to demonstrate the Defendant committed a volitional act of infringement Plaintiff is wrongfully suing Defendant.

186. Plaintiff is unable to prove that the alleged activities even constitute an act of infringement because it cannot be demonstrated based on the evidence provided that any defendant made a complete copy of the work alleged by Plaintiff.

THIRD DEFENSE

De Minimis Non Curat Lex

187. Defendant submits that Plaintiff's claim for copyright infringement is barred by the doctrine of *de minimis non curat lex* (the law cares not for trifle) or *de minimis* use.

188. Plaintiff's allegations, even if true, demonstrate at best evidence of *de minimus* infringement, and as such, the claim should be barred.

FOURTH DEFENSE

Failure to Mitigate Damages

189. Plaintiff has made no attempt to mitigate any actual or perceived damages, which Defendant expressly denies; therefore, Defendant requests dismissal of Plaintiff's Complaint because Plaintiff has failed to take the reasonable and necessary steps to mitigate any damages.

FIFTH DEFENSE

Innocent Infringement

190. Notwithstanding any other defenses disclosed herein or without admitting any conduct alleged by Plaintiff, if Defendant is found liable for infringing Plaintiff's copyrighted material, such infringement was innocent because other unknown personnel must have used her Internet connection without her knowledge or consent.

SIXTH DEFENSE

Barring of Statutory Damages and Attorney's Fees

191. Plaintiff's claim for statutory damages is barred by the U.S. Constitution. Amongst other rights, the Fifth Amendment right to due process bars Plaintiff's claim. As the Supreme Court has held, due process will prohibit an award of statutory damages meeting or exceeding a proportion of ten times or more actual

damages. See *State Farm Mutual Automobile Insurance Co., v. Campbell* 528 U.S. 408, 123 S. Ct. 1513, 1524 (2003); see also *Parker v. Time Warner Entertainment Co.*, 331 F. 3d 13, 22 (2nd Cir. 2003); in *Re Napster, Inc.*, 2005 WL 1287611, 377 F. Supp. 2D 796, 77 U.S. P. Q.2d 1833, (N.D. Cal. 2005). In fact, an award of statutory damages at four times actual damages “might be close to the line of constitutional impropriety.” *Id.* If all of Plaintiff's settlements for infringement of the works in question are added together, the damages likely exceed beyond the statutory maximum allowed by the copyright statute.

SEVENTH DEFENSE

License, Consent, and Acquiescence

192. Plaintiff's claims are barred by Plaintiff's implied license, consent, and acquiescence to Defendant because Plaintiff authorized use via Bit Torrent.

EIGHT DEFENSE

Unclean Hands

193. Plaintiff's claims are barred by the doctrine of unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Defendant having fully answered and pled to the causes of actions herein, Defendant requests a jury trial on the claims herein insofar as they can be properly heard by a jury and an order granting the following relief:

- a. A judgment in favor of Defendant denying Plaintiff's requested relief and dismissal of Plaintiff's Complaint with prejudice by this court;
- b. An award of attorneys fees against Plaintiff under 17 U.S.C. § 505 for bringing and maintaining this action; and
- c. Such other relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Dated: October 21, 2013

Respectfully submitted,

/s/ John Whitaker

John Whitaker

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Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned attests that the foregoing document has been served on all parties of record via the Court's ECF service system on the date indicated below.

DATED: October 21, 2013

/s/ John Whitaker
John Whitaker